

BRB No. 11-0471 BLA

SHIRLEY M. BAUGHAN)
(Widow of CHARLES W. BAUGHAN))
)
Claimant-Respondent)
)
v.) DATE ISSUED: 03/08/2012
)
PRATT MINING COMPANY)
)
and)
)
WEST VIRGINIA COAL WORKERS')
PNEUMOCONIOSIS FUND)
)
Employer/Carrier-)
Petitioners)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) DECISION and ORDER

Appeal of the Order Awarding Survivor's Benefits of William S. Colwell,
Administrative Law Judge, United States Department of Labor.

Ashley M. Harman and Amy Jo Holley (Jackson Kelly PLLC),
Morgantown, West Virginia, for employer/carrier.

Paul L. Edenfield (M. Patricia Smith, Solicitor of Labor; Rae Ellen James,
Associate Solicitor; Michael J. Rutledge, Counsel for Administrative
Litigation and Legal Advice), Washington, D.C., for the Director, Office of
Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and
McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Order Awarding Survivor's Benefits (11-BLA-5394) of Administrative Law Judge William S. Colwell rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(l)) (the Act). This case involves a survivor's claim filed on April 6, 2010.¹

On March 23, 2010, amendments to the Act affecting claims filed after January 1, 2005, were enacted. The amendments, in pertinent part, revive Section 932(l) of the Act, which provides that a survivor of a miner who was determined to be eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. Pub. L. No. 111-148, §1556(b) (to be codified at 30 U.S.C. §932(l)). The district director awarded benefits to claimant pursuant to Section 932(l), and employer requested a hearing. Director's Exhibits 9, 10.

While the case was pending before the Office of Administrative Law Judges, the Director, Office of Workers' Compensation Programs (the Director), moved for a summary decision, arguing that there was no genuine issue of material fact concerning whether claimant was automatically entitled to benefits pursuant to amended Section 932(l). Employer responded, asserting that Public Law 111-148 and the amendments to the Act are unconstitutional, and that amended Section 932(l) may not be applied to this case, as the miner filed his claim before January 1, 2005.

In his Order Awarding Survivor's Benefits dated March 16, 2011, the administrative law judge rejected employer's arguments, finding that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to amended Section 932(l). Order at 2. Accordingly, the administrative law judge awarded benefits. *Id.* at 3.

On appeal, employer challenges the administrative law judge's application of amended Section 932(l) to this case. Claimant has not filed a response brief. The Director responds, urging the Board to affirm the administrative law judge's award of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence,

¹ Claimant is the widow of the miner, who died on February 20, 2010. Director's Exhibit 4. At the time of his death, the miner was receiving federal black lung benefits pursuant to an award on his lifetime claim. Decision and Order at 2; Director's Exhibit 1.

and in accordance with applicable law.² 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer contends that retroactive application of amended Section 932(l) is unconstitutional, because it violates employer’s due process rights, and constitutes an unconstitutional taking of employer’s property, in violation of the Fifth Amendment to the United States Constitution. Employer’s Brief at 18, 21. These arguments have been rejected by the United States Court of Appeals for the Fourth Circuit and, therefore, are without merit. *W. Va. CWP Fund v. Stacy*, No. 11-1020, 2011 WL 6396510, at *3-9 (4th Cir. Dec. 21, 2011) *aff’g Stacy v. Olga Coal Co.*, 24 BLR 1-207, 1-214 (2010); *see also B&G Constr. Co. v. Director, OWCP [Campbell]*, 662 F.3d 233, 254-63 (3d Cir. 2011) (rejecting due process and takings challenges to amended Section 932(l)). Further, as the Fourth Circuit recently held that the operative date for determining a surviving spouse’s eligibility under amended Section 932(l) is the date that the survivor’s claim was filed, not the date that the miner’s claim was filed, employer’s request to hold this case in abeyance pending the court’s decision on that issue is denied as moot. *Stacy*, No. 11-1020, 2011 WL 6396510 at *8-9.

Employer further requests that this case be held in abeyance pending the United States Supreme Court’s resolution of the legal challenges to Public Law No. 111-148. Employer’s Brief at 11. Employer’s request is denied. *See Stacy*, No. 11-1020, 2011 WL 6396510 at *3 n.2; *see also Stacy*, 24 BLR at 1-215; *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-201 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011) (unpub. Order), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011).

In this case, claimant satisfied her burden to establish each fact necessary to demonstrate her entitlement under amended Section 932(l): That she filed her claim after January 1, 2005; that she is an eligible survivor of the miner; that her claim was pending after March 23, 2010; and that the miner was determined to be eligible to receive benefits at the time of his death. Therefore, we affirm the administrative law judge’s determination that claimant is derivatively entitled to benefits pursuant to amended Section 932(l). 30 U.S.C. §932(l).

² The record reflects that the miner’s coal mine employment was in West Virginia. Director’s Exhibit 1. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

Accordingly, the administrative law judge's Order Awarding Survivor's Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge